

REMARKS

Introduction

Claims 1, 3, 4, 9, 12, 13, 15, 23, and 24 have been previously cancelled. Claims 5 and 25 have been amended. Claims 2, 6-8, 10, 11, 14, 16-22, and 26 are also in the case. No new matter has been added by any of the amendments to the claims. Applicant reserves the right to claim any lost subject matter in a continuation or divisional application.

Claims 2, 5, 7, 8, 10, 11, 14, 16-19, 21, 22, 25, and 26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Fritsch et al. U.S. Patent Application Publication No. 2002/0023038 (hereinafter "Fritsch") in view of Rabenold et al. U.S. Patent 6,813,612 (hereinafter "Rabenold") and further in view of *Public Notice, Federal Communications Commission* (hereinafter "FCC").

Claims 6 and 20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Fritsch and Rabenold in view of FCC and further in view of Alaia et al. U.S. Patent 6,230,147 (hereinafter "Alaia").

Reconsideration and allowance of this application in light of the following remarks is hereby respectfully requested.

The Rejections Based on 35 U.S.C. § 103

Fritsch in view of Rabenold and FCC

The Examiner rejected claims 2, 5, 7, 8, 10, 11, 14, 16-19, 21, 22, 25, and 26 under 35 U.S.C. § 103(a) as being unpatentable over Fritsch in view of Rabenold and further in view of FCC. Applicant respectfully traverses.

As defined by each of applicant's amended independent claims 5 and 25, conducting an auction comprises inducing bidders to place a bid by selecting from a plurality of predetermined bid increments and, upon occurrence of a revision event, revising said

predetermined bid increments, wherein said revision event comprises the detection of a preprogrammed condition by a web site system, and "wherein said preprogrammed condition is related to the passage of a certain period of time between placement of bids." As described on page 21, lines 1-3 of applicant's specification, for example, "the failure to receive a bid within a certain period of time might be the 'revision event' which triggers a revision of the predetermined bid increments."

On page 5, lines 8-14 of the Office Action, the Examiner contends that "Fritsch does not specifically disclose that the revision event resulting in bid increment change comprises a preprogrammed condition related to the passage of time between bids. FCC discloses this limitation at pages 5-6," and that it would have been obvious to one of ordinary skill in the art at the time the invention was made "to modify Fritsch to include the condition related to passage of time between bids to modify bid increments disclosed by FCC because this would allow bid price improvement by using smaller, more palatable bid increments to increase bidder interest." However, applicant respectfully disagrees and submits that Fritsch, Rabenold, and FCC, either independently or in combination, do not show or suggest each and every element of applicant's independent claim 5 or 25.

Particularly, nowhere does FCC show or suggest revising bid increments "based upon the passage of a certain period of time between placement of bids," as required by each of applicant's amended claims 5 and 25. Instead, FCC merely discloses a "standard exponential smoothing methodology to calculate minimum bid increments," wherein the computation is based on an activity index, "which is calculated as the weighted average of the activity in that round and the activity index from the prior round," (FCC, page 5, lines 11-22). Therefore, this "standard exponential smoothing methodology" of FCC does not revise bid

increments "based upon the passage of a certain period of time between placement of bids," as required by applicant's independent claims 5 and 25, but rather FCC revises bid increments based upon, among other things, the number of bids made during a round. Put an other way, FCC discloses altering bid increments based upon the number of new bids made during a round, and not upon the "passage of a certain period of time between placement of bids," as required by applicant's amended independent claims 5 and 25.

Therefore, applicant respectfully submits that Fritsch in view of Rabenold and FCC neither shows nor suggests "revising" predetermined bid increments upon the detection of a preprogrammed condition that is "related to the passage of a certain period of time between placement of bids," as required by each of applicant's amended claims 5 and 25. Therefore, applicant respectfully submits that Fritsch in view of Rabenold and FCC neither shows nor suggests each and every element of applicant's claim 5 or claim 25, and, therefore, does not make obvious applicant's claim 5 or claim 25.

Thus, for at least the above reasons, each of applicant's independent claims 5 and 25 is allowable over Fritsch in view of Rabenold and FCC. Applicant respectfully requests, therefore, that the rejection under 35 U.S.C. § 103(a) of each of applicant's independent claims 5 and 25, and any claims dependent therefrom, including claims 2, 7, 8, 10, 11, 14, 16-19, 21, 22, and 26, be withdrawn.

Fritsch and Rabenold in view of FCC and Alaia

The Examiner rejected claims 6 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Fritsch and Rabenold in view of FCC and further in view of Alaia.

As applicant has pointed out above, amended independent claim 5 is patentable over Fritsch in view of Rabenold and FCC. For at least the foregoing reasons, claim 6, which depends from


claim 5, is patentable over Fritsch and Rabenold in view of FCC and further in view of Alaia. Also, as applicant has pointed out above, amended independent claim 25 is patentable over Fritsch in view of Rabenold and FCC. For at least the foregoing reasons, claim 20, which depends from claim 25, is patentable over Fritsch and Rabenold in view of FCC and further in view of Alaia.

Applicant respectfully requests, therefore, that the rejection under 35 U.S.C. § 103(a) of each of applicant's claims 6 and 20, and any claims dependent therefrom, be withdrawn.

#### Conclusion

The foregoing demonstrates that claims 2, 5-8, 10, 11, 14, 16-22, 25, and 26 are allowable. This application is therefore in condition for allowance. Reconsideration and allowance are accordingly respectfully requested.

Respectfully submitted,



---

Jeffrey C. Aldridge  
Registration No. 51,390  
Agent for Applicant  
FISH & NEAVE IP GROUP  
ROPES & GRAY LLP  
Customer No. 1473  
1211 Avenue of the Americas  
New York, NY 10036  
Tel.: (212) 596-9000  
Fax: (212) 596-9090